STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2017-207-E

In the Matter of: Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent	)	BRIEF RESPONDING TO ORDER 2017-493

The South Carolina Coastal Conservation League ("CCL") submits this brief to the Public Service Commission of South Carolina ("Commission") in response to Order No. 2017-493, requesting that "all parties" file a brief communicating their positions as to how Santee Cooper and SCE&G announcements affect the litigation" in Docket 2017-207-E.

FACTUAL BACKGROUND

On June 22, 2017, Friends of the Earth and Sierra Club filed a complaint requesting that the Commission initiate a formal adjudicatory proceeding to: a) determine the prudence of South Carolina Electric and Gas Company's ("SCE&G") recent acts or omissions in connection with building two new nuclear units at the V.C. Summer plant, b) determine the prudence of abandoning the units as well as the prudence of available least-cost efficiency and renewable energy alternatives, and c) require SCE&G to remedy, abate, and make reparations for unjust and unreasonable rates charged to ratepayers for the new units.

CCL filed a petition to intervene in this proceeding on July 3, 2017 to ensure that its members' interest in the prudent planning for, and acquisition of, clean energy resources is

represented. On July 26, 2017, the Commission granted CCL's request to intervene in this proceeding.

On August 1, 2017 SCE&G provided an *ex parte* briefing to the Commission, announcing its decision to cease construction of V.C. Summer nuclear units 2 and 3. That same day, SCE&G filed a petition for a "Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 & 3 and Related Matters," which the Commission assigned to Docket No. 2017-244-E. SCE&G also filed on that day a notice of intent to file a request for revised rates under the Base Load Review Act ("BLRA"), which the Commission assigned to Docket No. 2017-246-E.

Following a motion by the Office of Regulatory Staff ("ORS") to dismiss SCE&G's petition in Docket No. 2017-244-E and notice of intent in Docket No. 2017-246-E, and following requests by several public officials for an opportunity to review the decisions leading to the abandonment of the new nuclear project, SCE&G on August 15, 2017 withdrew its petition in Docket No. 2017-244-E and notice of intent in Docket No. 2017-246-E. SCE&G has reserved the right to refile petitions related to the abandonment of the project and to request revised rates.

POSITION AND ARGUMENT

Given SCE&G's announcement that it will abandon construction of the V.C. Summer nuclear units, CCL believes that any pre-filing of testimony in this Docket (2017-207-E) should be deferred and consolidated with the docket in which the Commission will consider SCE&G's abandonment decision. However, as CCL noted in its petition to intervene in Docket No. 2017-244-E, CCL believes that, to the degree the future proceeding is adjudicated under the BLRA, it should be governed by BLRA section 58-33-280(K). The proceeding should not be governed by

sections 58-33-280(K) and 58-33-270(E), as proposed by SCE&G in Docket No. 2017-244-E. CCL encourages the Commission to establish the scope and legal parameters of any further proceedings as broadly and flexibly as possible in order to allow the Commission and the parties to consider all relevant means of addressing a unique and difficult situation.

CCL supports the complaint Friends of the Earth and Sierra Club filed pursuant to South Carolina Code sections 58-27-960, 58-27-1930, 58-33-275(E) and Commission Rules 103-824 and 103-825 requesting that the Commission initiate a formal adjudicatory proceeding. Many of the issues raised in that complaint are still relevant, including: a) the prudence of acts and omissions and costs incurred by SCE&G in connection with the nuclear project considering the information available at the time—particularly in the time period where SCE&G deviated from approved schedules, between the schedule modification proceeding last fall and the recent decision to abandon the project; b) the prudence of the decision to abandon the project and the timing of that decision given least-cost efficiency and renewable energy alternatives available to SCE&G; and c) whether any rate increases associated with the project are unjust and unreasonable and should be remedied given the alleged imprudence of SCE&G's acts and omissions. These issues are relevant as the Commission considers SCE&G's decision to abandon the units, whether to limit recovery of project abandonment costs, how to apportion risk and costs to SCE&G and its stockholders while protecting ratepayers, and any proposal from SCE&G to replace the project with capacity from alternative sources. Parties in the proceeding should therefore be afforded a full opportunity for discovery on the issues and claims outlined in the Friends of the Earth and Sierra Club complaint.

CCL also supported the ORS motion to dismiss SCE&G's petition in Docket No. 2017-244-E and notice of intent in Docket No. 2017-246-E. SCE&G should not be allowed to seek

modification of the BLRA Order at this stage. As explained by ORS, the BLRA provides for the approval of base load plants and the orderly recovery of costs "through revised rate filings" only "[s]o long as the plant is constructed or being constructed in accordance with the approved schedules, estimates, and projections." S.C. Code Ann § 58-33-275(C); *see also id.* § 58-33-220(2) (defining a "Base load plant" to include a facility "intended in whole or in part to serve retail customers of a utility in South Carolina"). As noted earlier this year by CCL in fuel cost proceedings concerning the calculation of avoided costs, it has been apparent for some time that the project is not proceeding in accordance with approved schedules, estimates, and projections. In addition, upon abandonment, the utility can no longer demonstrate that the facility is intended to serve retail customers. Section 58-33-280(K) of the BLRA is the only part of the Act that mentions abandonment of a project under construction, and is therefore the only appropriate statutory authority under which a utility may seek recovery of costs for an "the abandoned plant" rather than a "base load plant." Revised rates sections 58-33-280(A) through (J) of the BLRA are no longer applicable.

Now that SCE&G has withdrawn its petition in Docket No. 2017-224-E, CCL believes that the issues raised in the Friends of the Earth and Sierra Club complaint should be considered in a new proceeding along with the issues presented by abandonment, recovery of capital costs, and rate setting resulting from abandonment. That proceeding should be governed primarily by section 58-33-280(K), as outlined by ORS in its motion to dismiss. The Commission should also exercise its general authorities to investigate, to set just and reasonable rates, and to establish standards, rules, and procedures that serve the public interest.[1] The proceeding should be broad

[1] The Commission's investigatory powers and general powers, *e.g.*, pursuant to South Carolina Code sections 58-27-140, 58-27-230, 58-27-850, 58-27-960, 58-27-1930 and South Carolina

in scope and the Commission should establish an adequate, orderly process to consider the wide range of issues, with plenty of notice and time for data requests. The opportunity for all parties in the proceeding to engage in discovery is essential to ascertain what SCE&G knew about the viability of the nuclear project at various points over the last year and the prudence of its resource planning and acquisition throughout the period of managing the project.[2] In fact, given the importance of the issues involved in the proceeding and critical need for discovery, CCL supports the request Friends of the Earth and Sierra Club included in their August 22, 2017 letter, asking that pre-hearing discovery be revived and SCE&G's pending motion to dismiss be set for oral argument. These steps will promote efficiency.

The opportunity for discovery is also essential to ensure that SCE&G's plans to recover costs from ratepayers and to replace the capacity of the units are prudent. In its *ex parte* briefing before the Commission on August 1, 2017, SCE&G announced that it now needs to build a combined cycle natural plant to meet capacity needs. And in its August 1, 2017 petition, SCE&G requested to "defer . . . any costs associated with current and future replacement capacity" and for authorization to "accrue carrying costs on the balance in this regulatory asset at its weighted average cost of long term debt." Yet SCE&G has provided no documentation and

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Code of Regulations section 103-810, give it latitude to fully examine the variety of important issues presented by the V.C. Summer situation. Two of these authorities—S.C. Code §§ 58-27-960 and 58-27-1930—were invoked in the Sierra Club and Friends of the Earth complaint.

[2] CCL sent two data requests to SCE&G seeking information relevant to the claims in Docket 2017-207-E. CCL sent a general data request to SCE&G's legal counsel on July 14, 2017, seeking all information provided in response to requests served by other parties. On July 21, 2017, CCL sent a data request for more specific information, including total-spent details, sensitivities surrounding the remaining cost to bring the units in service, details about modeled alternatives and input assumptions (including assumptions about construction and operating costs, system and retail sales, peak load, fuel and CO_2 prices, efficiency and renewable energy costs and impacts, and unit retirements), as well as emissions and revenue requirements for the modeled alternatives. SCE&G never even acknowledged these requests.

has gone through no transparent planning process to ensure that this is appropriate. SCE&G has repeatedly told CCL and other intervenors in important planning proceedings this year that the nuclear units were on schedule.[3] SCE&G ignored CCL's urging that it plan its resource portfolio with greater attention to the risks associated with constructing the nuclear units and to the potential for abandonment.[4] Docket No. 2017-9-E, CCL and SACE's Comments on SCE&G's 2017 Integrated Resource Plan, May 26, 2017. SCE&G should not be allowed to bring on new capacity without considering all alternatives in a new and more complete way than in the past, and without an opportunity for review.

A new consolidated proceeding to address the project abandonment and claims of Friends of the Earth and Sierra Club will have important implications for ratepayers and future energy planning in South Carolina. CCL therefore also believes that any attempt by SCE&G to compress the hearing timeline should be rejected by the Commission absent extraordinary circumstances. In its August 1, 2017 petition, SCE&G requested an expedited hearing schedule, suggesting that it is necessary to receive an income tax deduction in tax year 2017 to protect ratepayers. Yet SCE&G did not provide sufficient support that an expedited decision was, in

[3] In at least two dockets that CCL has participated in since news broke that Westinghouse was on the brink of bankruptcy, SCE&G has asserted that both nuclear units were on schedule to come online in 2020. *See* Docket No. 2017-9-E, SCE&G's 2017 Integrated Resource Plan, Feb. 28, 2017; Docket No. 2017-2-E, CCL and SACE's Proposed Order at 14 and 20, Apr. 14, 2017 (citing testimony of SCE&G witnesses who stated that changes at V.C. Summer could impact avoided cost rates but that those impacts were not analyzed).

[4] Even where SCE&G compared the economics of completing the nuclear units versus abandoning them in favor of alternatives, SCE&G has always maintained that the analysis was not required. *See* Docket No. 2012-203-E, SCE&G's Response to Intervenors' Petitions for Rehearing or Reconsideration at 10, Dec. 6, 2012. In addition, SCE&G limited the analysis to a comparison of completing the V.C. Summer units versus building new natural gas units. None of the analyses SCE&G has completed—in Dockets 2012-203-E, 2015-103-E, and 2016-223-E—compared natural gas or nuclear generation to the least cost energy efficiency or renewable energy alternatives Friends of the Earth and Sierra Club have requested that SCE&G consider.

fact, necessary to obtain tax benefits. SCE&G should be required to offer strong supporting evidence to prove that its claims about tax benefits are true, with detailed information about how different decision timelines would affect rate outcomes, before any hearing schedule is expedited.

CONCLUSION

For all of these reasons, CCL respectfully asks that any pre-filing of testimony in this Docket (2017-207-E) be deferred and consolidated with the docket in which the Commission will consider SCE&G's abandonment decision. The new docket should be governed by section 58-33-280(K) of the BLRA and the Commission's general and investigatory authorities. It should not involve any modification of the BLRA Order or implicate the revised rates sections 58-33-280(A) through (J). CCL also requests that the Commission ensure that there is sufficient opportunity for discovery and that the proceeding is governed by a time schedule that facilitates participation by all parties and allows for adequate Commission oversight. One way to accomplish this is to fulfill the Sierra Club and Friends of the Earth's request that pre-hearing discovery be revived and SCE&G's pending motion to dismiss be set for oral argument.

Respectfully submitted this 23rd day of August, 2017.

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I certify that the following persons have been served with one (1) copy of the foregoing Brief by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

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